

**Northfork Energy, Inc. and Local Union No. 7425,
United Mine Workers of America, AFL-CIO.
Case 9-CA-29879**

February 4, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on August 26, 1992, the General Counsel of the National Labor Relations Board issued a complaint on October 8, 1992 against Northfork Energy, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 8, 1993 the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On January 12, 1993 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated December 15, 1992, sent by certified mail, notified Respondent that unless an answer was received by close of business on December 31, 1992, a Motion for Summary Judgment would be filed.¹ The Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The General Counsel's supplemental memorandum in support of the motion for summary judgment, filed January 26, 1993, indicates that this letter was returned to the Regional Office as unclaimed. The Respondent's failure or refusal to claim certified mail, however, cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the transportation of coal. During the 12-month period ending July 31, 1992, the Respondent, in conducting its operations, performed services valued in excess of \$50,000 for Arch of Kentucky, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About March 1992, the Respondent, at the Arch of Kentucky scale house, told an employee to quit because the employee wanted to enforce the collective-bargaining agreement.

About April 1992, the Respondent, by telephone, threatened an employee with unspecified reprisals if that employee filed a grievance.

About August 21, 1992, the Respondent, at Arch of Kentucky's Harlan County, Kentucky facility, threatened to cause the discharge of an Arch of Kentucky employee who had discussed grievances with Respondent's employees.

About August 24 and 25, 1992, the Respondent, at Arch of Kentucky's Harlan County, Kentucky facility, threatened unspecified reprisals in retaliation for employees' grievance-filing activities.

About August 21, 1992, the Respondent, outside the Local 7425 union hall, threatened to fight an employee as he emerged from a union meeting.

On August 21, 1992, the Respondent followed an automobile driven by an employee who had exited from the Local 7425 union hall and attempted to force the employee off the road.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Northfork Energy, Inc., Hazard, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees to quit because they want to enforce the collective-bargaining agreement.

(b) Threatening employees with unspecified reprisals if they file grievances, or in retaliation for their grievance-filing activities.

(c) Threatening to cause the discharge of employees of other employers who discuss grievances with its employees.

(d) Threatening to fight employees as they emerge from union meetings at the union hall.

(e) Following automobiles driven by employees after they exit the union hall and attempting to force them off the road.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Hazard, Kentucky, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees to quit because they want to enforce the collective-bargaining agreement.

WE WILL NOT threaten employees with unspecified reprisals if they file grievances, or in retaliation for their grievance-filing activities.

WE WILL NOT threaten to cause the discharge of employees of other employers who discuss grievances with our employees.

WE WILL NOT threaten to fight employees as they emerge from union meetings at the union hall.

WE WILL NOT follow automobiles driven by employees after they exit from the union hall or attempt to force them off the road.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

NORTHFORK ENERGY, INC.